**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO. 1233 OF 2006**

**(for restoration)**

**IN**

**SECOND APPEAL NO. 1387 OF 2005**

| Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's Orders | Court's or Judge's Orders |
|---|---|

D.N. Gondhali for the appellants.

**CORAM: S.B. DESHMUKH, J.**

**DATE : AUGUST 16, 2006.**

**P.C. :**

1. Heard learned counsel for the appellant.

2. By this application, the applicant is seeking to recall the order passed by this court in Second Appeal No. 1387 of 2005 on May 4, 2006. It appears that Second Appeal

No. 1387 of 2005 was dismissed in default by this court on 2.12.2005. By order dated March 13, 2006, the appeal was restored. Thereafter by the order passed on March 27, 2006 notice was ordered to be issued. The applicant did not make payment of Bhatta therefore notice could not be issued. Therefore this Second Appeal No. 1387 of 2005 was dismissed for want of prosecution by this court by the order passed on May 4, 2006. In para 3 of the application, it is stated, that the learned cousnel appearing for the appellant was unable to attend the court due to illhealth of his father and thus he instructed the Associate advocate to conduct the appeal, but, unfortunately he was busy in other matter, before another court. Ultimatley the matter came to be dismissed on 4.5.2006.

3. Having considered the nture of proceedings and the explanation tendered in para 3 of the application, in my view, in the absence of respondents, this application can be favourably considered and order passed by this court dismissing the appeal can be recalled.

4. In the event, Civil Applciation is allowed. Order passed by this court in S.A. No. 1387 of 2005 dismissing the appeal on 4.5.2006 is recalled. Civil Application is accordingly allowed and disposed off. Second Appeal No. 1387 of 2005 is restored, at its position. Learned cousnel for the applicant submits that Bhatta would be paid within a period of two weeks from today. Statement made is accepted and taken on record. Office is further directed to issue notice returnable within a period of

five weeks from the date of the receipt of the Bhatta. In case, of failure on the part of the applicant in making payment of Bhatta, this appeal stands dismissed without further reference to the court.

sd/-

(JUDGE)